

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5038-13T3

LIONELL MILLER,

Appellant,

v.

NEW JERSEY DEPARTMENT
OF CORRECTIONS,

Respondent.

Submitted August 1, 2017 – Decided November 30, 2017

Before Judges Sabatino and O'Connor.

On appeal from the New Jersey Department of
Corrections.

Lionell Miller, appellant pro se.

Christopher S. Porrino, Attorney General,
attorney for respondent (Lisa A. Puglisi,
Assistant Attorney General, of counsel;
Gregory R. Bueno, Deputy Attorney General,
on the brief).

PER CURIAM

Appellant Lionell Miller, presently an inmate at East
Jersey State Prison, claims while incarcerated at New Jersey

State Prison (NJSP), his word processor and television were damaged by the correctional facility's staff. Following its investigation, respondent Department of Corrections (DOC) determined there was no evidence the staff was responsible for the alleged damage, and denied Miller's claim the DOC pay the cost to replace both items.

Miller filed a notice of appeal challenging the denial of his claim pertaining to the word processor. Although he indicated in his merits brief he was also appealing from the denial of his separate claim the DOC reimburse him the cost of his television, Miller never filed a notice or amended notice of appeal challenging such denial.¹ Accordingly, we decline to consider this discrete claim. As for the claim concerning the damaged word processor, we reverse and remand for further proceedings.

I

A

We first address Miller's claim the staff damaged his word processor. In November 2013, Miller obtained permission from the staff to mail his word processor to the vendor to be

¹ We address the procedural history, which is somewhat atypical, in more detail below.

repaired. Although the word processor worked, there was a problem with the keyboard, which caused the keys to "freeze up" on occasion. There also was a small incision in the input cord.

On February 27, 2014, Miller gave Corrections Officer Watson the unpackaged word processor so it could be mailed from the facility's mail room. The word processor was later packaged for delivery in the mail room. Although outgoing mail is to be sent to the post office within one day of being received in the mail room, excluding weekends, holidays, and during emergency incidents, see N.J.A.C. 10A:18-5.6(b), Miller's word processor was not mailed out for two weeks.

On March 25, 2014, Miller received a letter from the vendor's employee informing him the word processor was badly damaged when the employee opened the package at the vendor's location, and could not be repaired. The employee opined the word processor had been "severely" damaged during shipping, but did not elaborate upon why he believed the damage occurred during shipping.

But the employee made the additional observation, suggesting the manner in which the word processor was packaged caused the loss. He stated, "When we opened the box, the monitor was basically sitting on top of the keyboard. This resulted in the damage of about a dozen of the keys on the

keyboard as well as the breaking of the clear plastic cover." The vendor provided pictures of the damaged keyboard, keys, and plastic cover.

Miller submitted a claim to the DOC for damaging his word processor, requesting compensation of \$595, the cost of this item when he purchased it new in 2009. In his claim, Miller referenced the vendor's letter and alleged the facility's staff had damaged the word processor before it was mailed to the vendor.

As part of the DOC's investigation, a Sergeant Patterson interviewed Miller and a "property room officer" named Watson.² Watson told Patterson the word processor was shipped out for repair on February 21, 2014 and returned, unrepaired, in April. Sergeant Smith authored a memo in which he merely stated in conclusory fashion, "This Word Processor was not damaged in the property area."

On May 20, 2014, Lieutenant Gerdes, an administrative lieutenant of the NJSP, issued a "Disposition of Inmate Claim," in which he denied Miller's claim for damage to his word processor. Gerdes' only comments were, "The investigation did

² The record does not reveal the first names of several of the DOC staff members. We intend no disrespect by referring to them by just their last names.

not reveal any neglect by the Correctional Facility. The item was not damaged in the property area."

On July 1, 2014, Miller appealed from this determination. After filing his merits brief, the DOC filed a motion to remand this matter because the NJSP's business manager and administrator had not reviewed Miller's claim before it was denied, as required by N.J.A.C. 10A:2-6.1(d) and (e). We granted the motion and, in our remand order, directed the DOC to fully comply with N.J.A.C. 10A:2-6.2(a) and make specific findings as to (1) whether the investigation revealed any neglect by the facility staff, and (2) whether the staff exercised care to prevent property loss, damage, or destruction.

Thereafter, the business manager and administrator reviewed and rejected Miller's claim. The business manager's findings consisted of the following statement: "Based on [the] claim form submitted by Inmate Miller and reports written, no evidence has been submitted to substantiate the claim that the word processor was damaged by DOC staff."

On September 16, 2015, the administrator of the NJSP issued a final agency decision, which consisted solely of the following statement. "It is impossible to determine if the damage occurred after the [word processor] was mailed from NJSP. It is possible that the package was mishandled by the mail carrier."

B

As for the claim pertaining to his television, Miller contends, while in detention and administrative segregation for a period in 2014, the staff removed his television set from his cell and intentionally damaged it. He contends he submitted a claim to the DOC for \$181.17, the cost to replace the television. On August 8, 2014, his claim was denied. Miller did not file an amended notice of appeal pursuant to Rule 2:5-1 challenging this denial, merely addressing such claim in his merits brief. The DOC filed a motion to again remand this matter, asserting Miller never filed a claim for loss to the television, but, for the sake of "judicial economy," requested a remand to investigate the claim so it could issue a final agency decision.

On January 13, 2016, we granted this motion. In our order we stated, among other things, that if the DOC ruled adversely to Miller on his claim concerning the alleged damage to his television, he had forty-five days to file an amended notice of appeal to include the separate final agency decisions as to both the television and the word processor.

On July 21, 2016, the NJSP's administrator "disapproved" Miller's claim on the ground he had not submitted any claim for the alleged damage. Miller did not file an amended notice of

appeal to include the denial of the claim pertaining to the television.

II

On appeal, Miller contends the DOC failed to properly investigate his claims, as required by N.J.A.C. 10A:2-6.1. and 10A:2-6.2 and, therefore, the DOC's determinations his claims lacked merit were arbitrary and capricious.

We readily dispose of Miller's claim pertaining to the television. Rule 2:4-1(b) requires an appeal from "final decisions or actions of state administrative agencies or officers . . . shall be taken within 45 days from the date of service of the decision or notice of the action taken." Miller never appealed from and, thus, we have no jurisdiction to review the denial of this particular claim. Sikes v. Twp. of Rockaway, 269 N.J. Super. 463, 465-66 (App. Div.), aff'd o.b., 138 N.J. 41 (1994).

We now turn to Miller's contention the DOC failed to properly investigate his claim the staff caused damage to his word processor, rendering the DOC's rejection of this claim arbitrary and capricious.

We recognize our role on review is limited. Our function is to determine whether the administrative action under review was arbitrary, capricious, or unreasonable. See Henry v. Rahway

State Prison, 81 N.J. 571, 580 (1980). We will only decide whether the findings could reasonably have been reached on the credible evidence in the record, considering the proofs as a whole. See Close v. Kordulak Bros., 44 N.J. 589, 599 (1965).

Nevertheless, our review is not "perfunctory," nor is "our function . . . merely [to] rubberstamp an agency's decision[.]" Figueroa v. New Jersey Dep't of Corr., 414 N.J. Super. 186, 191 (App. Div. 2010). "[R]ather, our function is 'to engage in a careful and principled consideration of the agency record and findings.'" Ibid. (citation omitted).

To enable us to exercise this function, the agency must provide a reasonable record and statement of its findings. Blyther v. N.J. Dep't of Corr., 322 N.J. Super. 56, 63 (App. Div.), certif. denied, 162 N.J. 196 (1999). "[W]e insist that the agency disclose its reasons for any decision, even those based upon expertise, so that a proper, searching, and careful review by this court may be undertaken." Balaqun v. N.J. Dep't of Corr., 361 N.J. Super. 199, 203 (App. Div. 2003).

Turning to the regulations that govern the outcome here, N.J.A.C. 10A:2-6.1(b)(1) provides that when an inmate at a correctional facility claims damage to his personal property, there must be an investigation that includes, but is not limited to, obtaining statements from the inmate, witnesses, and

correctional facility staff. Further, a report of the investigation must be prepared. N.J.A.C. 10A:2-6.1(b).

Thereafter, the business manager of the correctional facility must review the investigative report and recommend, with substantiating reasons, either the approval or denial of the claim. N.J.A.C. 10A:2-6.1(c) and (d). Following the issuance of the business manager's recommendation, the administrator of the correctional facility reviews the matter, see N.J.A.C. 10A:2-6.1(e). If a claim is denied, the administrator must provide substantiating reasons, see N.J.A.C. 10A:2-6.1(f). Several factors must "be considered before recommending [the] approval or disapproval of claims." N.J.A.C. 10A:2-6.2(a). These factors include whether the investigation revealed neglect by the correctional facility, N.J.A.C. 10A:2-6.2(a)(1), and whether care was exercised by facility staff to prevent the loss, damage or destruction to the property, N.J.A.C. 10A:2-6.2(a)(2).

Here, the administrator does not provide substantiating reasons for denying the claim pertaining to the word processor. He merely states in conclusory manner that it is "impossible" to determine if the damage occurred after the word processor was mailed from NJSP, and that it is possible the package was mishandled by the mail carrier, but provided no analyses of how

he arrived at these two conclusions. To be sure, the NJSP is not claiming the word processor was damaged to the extent observed by the vendor when still in Miller's possession or that the vendor caused the damage. Thus, the opportunity for the word processor to have become damaged was limited to when the word processor was in the NJSP's possession or during its shipment.

Notwithstanding the limited opportunities for the word processor to have become damaged, the administrator fails to address the unrefuted evidence that the correctional facility staff packaged the word processor and placed the monitor on top of the keyboard before sealing and sending the package for shipment. The packaging of the word processor calls into question whether the keyboard sustained damage as a result of the weight of the monitor. There is no indication those who conducted the investigation inquired into why the staff packaged the word processing in such manner and whether the way this item was placed in the box for shipment caused the damage. There is also no indication the DOC looked into how the word processor was packaged to protect it during shipment.

Those who participated in the investigation merely provided perfunctory, conclusory statements that yielded no significant information. The administrator knew or should have known the

investigation failed to provide him with sufficient evidence to draw any meaningful conclusions. In short, the DOC failed to comply with the relevant requirements in N.J.A.C. 10A:2-6.1 and 6.2, not to mention our remand order directing the DOC make specific findings as to (1) whether the investigation revealed any neglect by the facility staff, and (2) whether the staff exercised care to prevent property loss, damage, or destruction.

Because DOC's decision is not based upon credible evidence in the record, it is arbitrary, capricious, and unreasonable. Accordingly, we reverse the May 20, 2014 final agency decision denying Miller his claim for compensation for the damage caused to his word processor, and remand this matter to the DOC to engage in an investigation and fact-finding mandated by the applicable regulations.

Reversed and remanded for further proceedings consistent with this opinion. The remand shall be completed no later than January 16, 2018. If Miller is aggrieved by the outcome of the remand, he must file any new appeal within forty-five days of the final agency decision. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION